



Subject Index

	Page
1. This appeal is ripe for review	1
2. The questions presented are substantial	3
Conclusion	4

Table of Authorities Cited

Cases	Page
Frank v. Maryland, 359 U.S. 360 (1959)	3
Mapp v. Ohio, 367 U.S. 643 (1961)	3
Marcus v. Property Search Warrant, 367 U.S. 717 (1961) ...	3
Rescue Army v. Municipal Court, 331 U.S. 549 (1946)	1
Stanford v. Texas, 379 U.S. 476 (1965)	3

Constitutions

United States Constitution:	
Fourth Amendment	3
Fourteenth Amendment	3

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1965

No. 1139

ROLAND CAMARA,

Appellant,

VS.

MUNICIPAL COURT OF THE CITY AND
COUNTY OF SAN FRANCISCO,

Appellee,

STATE OF CALIFORNIA,

Real Party in Interest.

On Appeal from the Judgment of the District Court of Appeal,
State of California, First Appellate District

OPPOSITION TO MOTION TO DISMISS OR AFFIRM

1. THIS APPEAL IS RIPE FOR REVIEW.

As conceded in the Motion to Dismiss (p. 6) the judgment below is a final judgment and this appeal is within the jurisdiction of this Court. See *Rescue Army v. Municipal Court*, 331 U.S. 549, 566-68 (1946), and the cases cited therein, in which the Court recognizes that jurisdiction lies to review the denial by the

highest State court of a writ of prohibition to prevent criminal prosecution.

Given this jurisdiction, the appeal is ripe for review. There is nothing further in this case than a decision on the federal constitutional issues. As the opinion of the District Court of Appeal states (J. S. App. A ii):

"Plaintiff expressly concedes that he committed the offense proscribed by section 507 of the Housing Code and that his defense to prosecution for said charge is predicated solely upon the alleged unconstitutionality of section 503 of said code."

The Motion to Dismiss unrealistically conjures up certain "possible" remaining issues. However, this appeal is a clear-cut attack on the face of the ordinance for its failure to require probable cause or a warrant. The "question" raised by the Motion to Dismiss (p. 8) about appellant's residency is specious. A comparison of paragraphs I and II of the Petition for the writ in the trial court (R.T. 3-4) with paragraphs I and II of the Answer (R.T. 24-26) shows that no issue of fact on residency exists in this case. Furthermore, the fact of residency, which will lead to a criminal conviction, is hardly a "*self-serving* 'admission'".

Judicial policy is not served by requiring the accused to submit to the onus of a criminal conviction in order once again to raise certain well-defined constitutional issues when he now presents these issues through a procedure that has been accepted by this Court as jurisdictionally proper.

2. THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The very length that the State goes to in order to show the supposed insignificance of this case emphasizes how substantial the issues are.

a. The Motion to Dismiss (p. 9) concedes that the precise questions presented by this appeal are not controlled by *Frank v. Maryland*, 359 U.S. 360 (1959). In the *Frank* case the ordinance at least required probable cause although no warrant was required. As was pointed out in the Jurisdictional Statement (pp. 12-13) the instant case authorizes a search of private homes without warrant or probable cause—something the majority of the Court in the *Frank* case would not have allowed.

b. Despite the State's contention, the opinion in *Frank* clearly states that the protections of the Fourth Amendment, as applicable to the States through the Fourteenth Amendment, are limited to criminal proceedings (359 U.S. at 365-66). Such a restriction of the Fourth Amendment is contrary to the decisions of this Court. See *Marcus v. Property Search Warrant*, 367 U.S. 717 (1961); *Mapp v. Ohio*, 367 U.S. 643 (1961); and *Stanford v. Texas*, 379 U.S. 476 (1965), all of which are discussed in the Jurisdictional Statement at pages 8-10.

c. To require minimal constitutional safeguards is not to prohibit orderly and effective procedures in maintaining proper health standards. The protection against the unreasonable search of one's home is a fundamental constitutional protection. By placing the neutral judge between the administrator and the in-

dividual, the use of the warrant prevents the overzealous or vindictive administrator from the arbitrary exercise of the vast authority given him.

It would be far too facile a means of evading judicial control by characterizing an inspection as part of a "planned area inspection" as the State is wont to do. Given the need for continuous inspection of large areas to assure conformity to health standards, we must also recognize the greater constitutional necessity of preventing uncontrolled intrusion into private dwellings. Surely reasonable procedural protections can be devised to meet both these needs.

CONCLUSION

For these reasons it is respectfully submitted that the Motion to Dismiss be denied and that the Court either reverse the decision below upon the merits or else note probable jurisdiction of this appeal.

Dated, San Francisco, California,

June 27, 1966.

Respectfully submitted,

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